IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1519 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AKBARALI SABDARALI & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR RN SHAH for Petitioner(s) : 1 - 2.
Mr P R Abichandani, asstt.GOVERNMENT PLEADER for Respondent(s) : 1 - 3.
DS AFF.NOT FILED (R) for Respondent(s) : 4,
MR JR NANAVATI for Respondent(s) : 4,
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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 06/10/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

The petitioner's land situated at village Unn, Taluka Choryasi Taluka,

District Surat bearing Block No.180 has been acquired for the public purpose namely; to use it for commercial purpose by the acquiring body i.e. Surat Urban Development Authority, (SUDA) respondent no.4. Notification under section 4 of the Land Acquisition Act , 1894 (for short, 'the Act') was issued on 24.9. 1984 followed by Notification under section 6 issued on 25.2.1986. Notice under section 9 (1) of the Act was issued to the petitioner, who filed his reply on 4.10.1986. Thereafter, award has been made on 29.3.1988. The said award was in fact, not in respect of the land in question but it pertained to other lands acquired under the same proceedings. The award was not made in respect of block no.180 i.e the land in question because on 28.3.1988, stay was obtained by the petitioner against taking over the possession by the concerned respondent. It is the say of the petitioner that for considerable long period the concerned respondent did not implement the purpose for which the land was acquired. In fact, according to the petitioner, on 2.9.2004, Notification was issued by Government of Gujarat i.e respondent no. 1 – Urban Development and Urban Housing Development under the provisions of Gujarat Town Planning and Urban Development Act, 1976 deleting the land in question from the reservation for commercial use. Now it has been designated for residential use under section 12(2)(a) of the said Act.

3. It is the say of the petitioner that when the land has not been utilised

for the purpose for which it was acquired for almost 20 years, it is not within the powers of the respondent-State to change the public purpose and utilise the land for something else. Mr R N Shah, learned Advocate appearing for the petitioner has submitted that after a lapse of 20 years, the respondent-State cannot redesignate the land for residential purpose when originally it was acquired for the commerical purpose. He has further submitted that even otherwise also the acquisition would lapse because no award has been made within the period of two years from the date of issuance of notification under section 6 of the Act. He has placed reliance on provisions of section 11-A of the Act. As against that Mr J R Nanavaty, learned advocate appearing for respondent No.4 'SUDA' has submitted that the land is still required by SUDA for its own purpose. He has submitted that there is no question of releasing the land because according to him SUDA is still in a position to use Block No.180 and use the same for commercial purpose in accordance with the regulations. Mr P R Abichandani, learned AGP has submitted that when the land is required by SUDA, there is no question of releasing it from the acquisition by exercising power under section 41 (1) of the Act by the State.

4. We have carefully considered the rival submissions of the learned advocates. We have also perused the record of the case. It appears that the contention of Mr R N Shah, with regard to the award being made after the

period of limitation prescribed under the Act, and hence the acquisition gets lapsed is correct and it is required to be accepted. Provisions of section 11-A read as under:

> "11-A. Period within which an award shall be made. - The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse ;
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> *Provided* that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.
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> *Explanation* – In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded."

As stated above, the facts of the case clearly show that declaration under section 6 was made on 25.2.1986. Thereafter till 28.3.1988 no award was made. On 28.3.1988, the petitioner obtained stay against the possession of the land bearing Block No.180. On the next date i.e on 29.3.1988, the

award came to be made. These dates without any doubt, show that the award, for the first time was made after the expiry of two years. So far as these dates are concerned, no dispute has been raised by the other side also. When this is the position, in our opinion, the provision of section 11-A will come into play and the entire proceedings for the acquisition of the land in question shall lapse. Needless to say that when it is expressly provided in the Act that the provisions are mandatory and non-compliance thereof would result into lapse of the acquisition as envisaged under the Act, on this sole ground, the petition deserves to be allowed. When the acquisition lapses, naturally, the notification under sections 4 and 6 and notice under section 9 with respect to the land in question will stand quashed and set aside and consequently the award. When we are in agreement with the petitioner on this point, it is not necessary for us to deal with the other points raised in this petition. In view of the aforesaid, this petition is allowed. Rule is made absolute accordingly with no order as to costs.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

msp